

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	Chapter 11
	:	
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:	08-13555 (SCC)
	:	
Debtors.	:	(Jointly Administered)
	:	

**DECLARATION OF KUNIHIKO SHIMODA IN SUPPORT OF RESPONSE OF
CAPITAL PARTNERS SECURITIES CO., LTD. IN OPPOSITION TO PLAN
ADMINISTRATOR'S MOTION FOR AN ORDER IN AID OF EXECUTION OF THE
MODIFIED THIRD AMENDED JOINT CHAPTER 11 PLAN OF LEHMAN
BROTHERS HOLDINGS INC. AND ITS AFFILIATED DEBTORS**

I, Kunihiko Shimoda, hereby declare as follows:

1. I am the President and CEO at Capital Partners Securities Co., Ltd. (“CPS”). I have held this position for one (1) year and before that have held various roles during my approximately fifteen (15) years of employment at CPS. I have personal knowledge of the facts set forth herein, or base such knowledge on my review of the records maintained by CPS and my consultation with employees and advisors of CPS. If called as a witness, I could testify competently to all of the facts set forth below.

A. CPS' ROLE AS SUCCESSOR NOMINEE

2. CPS is a securities brokerage firm located in Tokyo, Japan, which offers a wide range of securities and investment advisory services. As a Japanese brokerage, CPS is subject to the Japanese Financial Instruments and Exchange Act of 2006, which governs the regulation of securities companies in Japan.

3. From May 2007 through June 2008, Lehman Brothers Japan Inc. (“**Lehman Japan**”) aggressively lobbied CPS to purchase structured securities issued by or in connection with Lehman Brothers Treasury Co. B.V. (“**LBT**”).

4. On or about June 4, 2008, following a downgrade of its long-term credit rating by Standard & Poor’s, an affiliate of Lehman Japan (Lehman Brothers Securities Co., Ltd., (“**LBSC**”)) sent a letter to CPS assuring CPS that this downgrade was not material. As a result of this letter and Lehman Japan’s continued aggressive marketing efforts, CPS placed certain LBT securities, including a portion of the securities comprising the basis of CPS’ Allowed Guarantee Claim,¹ with CPS’ retail investors.

5. In June 2008, CPS’ key contact at Lehman Japan suddenly left Lehman Japan and, without explanation, ceased communications.

6. It is my understanding that on September 16, 2008, Lehman Japan filed for civil reorganization in Tokyo District Court and ceased its operations not long thereafter.

7. It is also my understanding that prior to stopping operations, Lehman Japan acted as the nominee responsible for the securities that it had previously sold to CPS. As a result of Lehman Japan’s closure, CPS was forced to take over as nominee in respect of these securities.

8. As a nominee, CPS has an obligation to promptly distribute any amounts it received from the Plan Administrator to CPS’ ultimate investors in respect of the securities underlying CPS’ Allowed Guarantee Claims and CPS’ Primary Claims. CPS has complied with this obligation and

¹ Capitalized terms not defined herein shall have the meaning given them in the Motion of the Plan Administrator for an Order in Aid of Execution of the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors [ECF No. 59936], dated September 17, 2019 (the “**Motion**”).

has transferred to the ultimate investors any and all amounts it received from either LBHI or LBT to date.

B. LBHI'S REQUEST FOR DISGORGEMENT

9. On or around September 19, 2019, CPS received by DHL a copy of the Motion. This was the first time CPS received by registered mail or DHL any notice from the Plan Administrator that any alleged overpayment has been made to CPS and that CPS is requested to disgorge such alleged overpayments.

10. CPS has no record of receiving either the Plan Administrator June 2018 Letter or the Plan Administrator November 2018 Letter.

11. CPS has records of receiving the Plan Administrator July 2018 E-mail and the Plan Administrator January 2019 E-Mail, but in the absence of certified mail copies of the letters referenced therein, and in light of CPS' records reflecting the true economic value of aggregate LBT distributions (nearly \$5.9 million less than alleged by the Plan Administrator), CPS reasonably reacted to the emails with skepticism and suspicion.

12. As noted in the previous paragraph, while the Plan Administrator alleges that CPS received distributions from LBT in the aggregate amount of \$23,217,176.99, CPS' records show that the aggregate amount of distributions received from LBT is only \$17,341,164.11. A more detailed comparison thereof is demonstrated in Exhibit A attached hereto.

13. The Plan Administrator alleges that an excess payment has occurred by applying the Yen to Dollar exchange rate that was applicable as of December 6, 2011. But that rate was set nine months after the Tōhoku earthquake, tsunami and resulting disaster at the Fukushima nuclear power plant (which took place on March 11, 2011), at the exact point in time at which the relative value of Japanese Yen reached its most extreme point in reaction to that disaster. As such, this

rate was set at or near the peak of a huge (and unrepeated) spike in the value of Yen that materially deviates from typical Yen strength variations.

14. Further, LBT designated and provided a specific exchange rate applicable to each distribution (noted in the distribution notices transmitted by LBT in connection with each respective distribution). CPS has relied on the prevailing exchange rates provided by LBT in these notices to calculate the aggregate amount of consideration received from LBT on account of CPS' Primary Claims. A record of each of these rates, as applied to the relevant LBT distribution, is included in the chart set forth in Exhibit B attached hereto, providing calculation details for the aggregate amount of LBT distributions received by CPS.

C. **DOCUMENTS IN SUPPORT OF DECLARATION**

15. Exhibit A attached hereto is a table comparing the aggregate amount the Plan Administrator alleges to have been paid by LBT to CPS (as per the exhibit attached to the Plan Administrator November 2018 Letter) with the aggregate amount CPS actually received from LBT.

16. Exhibit B attached hereto is a table showing the LBT distributions made on each distribution date on an ISIN-by-ISIN basis, including the prevailing Yen to Dollar exchange that applied on the date of such distributions to result in the actual amount received by CPS in respect of each distribution.

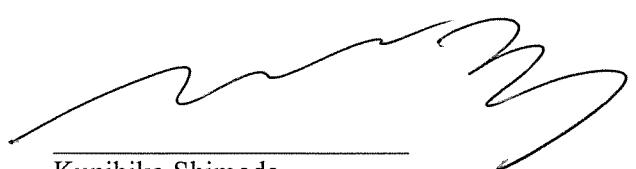
17. The demonstrative exhibits attached hereto are based on my own knowledge or the business records of CPS, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of CPS' business at or near the time of the acts, conditions, or events to which they relate. Any such business records relied on were prepared in the ordinary course of CPS' business by a person who had personal knowledge of the event being recorded and

had or has a business duty to record accurately such event. CPS would be happy to provide these records to the Court upon request.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 28, 2019



A handwritten signature in black ink, appearing to read "Kunihiko Shimoda". The signature is fluid and cursive, with a long horizontal stroke on the left and more vertical, wavy strokes on the right.

Kunihiko Shimoda